



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD.

Association of Portsmouth Teachers/NEA-NH

Complainant

v.

Portsmouth School District

Respondent

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Case No. E-0043-1

Decision No. 2007-108

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Association of Portsmouth Teachers/NEA-NH (the "Association") filed improper practice charges on June 18, 2007. The Association claims that the Portsmouth School District (the "District") violated RSA 273-A:5, I (a) (e) and (h) by failing to negotiate a new evaluation system for coaches and by its non-renewal of Martin James, the boys varsity soccer coach who was evaluated under the new evaluation system.

As remedies, the Association requests that the PELRB: 1) Find that the District has committed an Unfair Labor Practice; 2) Order that Mr. Martin be re-employed as the boys' high school soccer coach, (3) Order that Mr. Martin suffer no loss of pay or other benefits; 4) Order the District to negotiate with the Association over the new evaluation system for athletic coaches; and 5) Grant such other and further relief as may be just.

The District filed its Answer on July 3, 2007. The District contends that the complaint is untimely, that the District only determined that Mr. Martin's non-renewal was not subject to the grievance procedure, and the complaint should be dismissed.

The District requests that the PELRB: 1) Dismiss the instant Unfair Labor Practice Charge with prejudice; 2) Order the Association to reimburse the District for all costs associated with responding to the ULP; and 3) Grant such other relief as may be just and proper.

The undersigned hearing officer conducted a pre-hearing conference on July 19, 2007 at the PELRB offices in Concord.

PARTICIPATING REPRESENTATIVES

For the Association: James F. Allmendinger, Esq.

For the District: Daniel P. Schwarz, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether a new evaluation system for athletic coaches is a mandatory subject of bargaining?
2. If the new evaluation system is a mandatory subject of bargaining, whether the District in fact engaged in negotiations in a manner that satisfied its obligation to bargain?
3. Should Mr. Martin be reinstated if the District failed to engage in mandatory bargaining with respect to the evaluation process and what other remedies, if any, should be ordered?
4. Whether the Association's claim that the District improperly failed to negotiate a mandatory subject of bargaining is untimely?

WITNESSES

For the Association:

1. Janet Lovering, Association President
2. Richard Courtney, Uniserv Director
3. Martin James, former boys varsity soccer coach

For the District:

1. Russell Wilson, Athletic Director
2. Robert Lister, Superintendent

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party.

EXHIBITS

Joint Exhibits:

1. Mr. James evaluation and non-renewal notice and grievance package related thereto

For the Association:

1. Documentation re: School Board's refusal to negotiate

For the District:

1. Documents re: drafting of evaluation form

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is three (3) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before August 3, 2007 to discuss and prepare if appropriate a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.
2. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before August 3, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.


3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

August 14, 2007 @ 9:30 a.m.

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

July 19, 2007.


Douglas L. Ingersoll
Hearing Officer

Distribution:

James F. Allmendinger, Esq.

Daniel P. Schwarz, Esq.